IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4472 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

D B BRAHAMBHATT

Versus

DEVELOPMENT COMMISSIONER

Appearance:

MR YN OZA with MR ANSHIN H DESAI for Petitioner

MS MANISHA LAVKUMAR, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/02/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 17.8.1987 (Annexure "A" to the petition) dismissing the petitioner from service after holding a departmental inquiry. The petitioner was holding the post of Taluka

Development Officer in the Gujarat Panchayat Services Class-II. The order of dismissal is passed by the State Government in the Panchayats and Rural Housing Department.

2. The facts leading to filing of this petition, briefly stated and as avered by the petitioner, are as under :-

2.1 The petitioner joined the service as an Extension Officer (Education) in the year 1956. The petitioner was promoted to the higher post of Taluka Development Officer in 1963. At the relevant time, i.e. in the years 1970-71 the petitioner was discharging his duties as Taluka Development Officer at Visavadar, District Junagadh. The petitioner was transferred from Visavadar to Rapar, District Kutch in 1972 and thereafter to other places. In the year 1977, the petitioner was suspended and chargesheet was issued in a departmental inquiry in respect of seven charges.

2.2 The gist of the charges was that when the petitioner was serving as Taluka Development Officer, Visavadar, the petitioner had allotted parcels of land in as may as 29 cases without following the prescribed procedure and without holding any auction. The petitioner was also charged with the misconduct of allotting lands without authority. It was also alleged that by the misconduct in question, the petitioner also caused monetary loss to the Government.

2.3 The petitioner submitted his reply denying the charges. Ultimately, a Departmental Inquiry Officer was appointed. It appears that no witness was examined by either side because both the parties agreed that the inquiry may be decided on the basis of the documentary evidence produced by the department on the record of the inquiry. The Inquiry Officer submitted his report on 29.3.1985 holding that all the charges except charge No. 4 were proved. Charge No. 4 was that the petitioner had sold the plots in question without taking the opinion of the Gram Panchayat. Thereafter, the State Government passed the impugned order dated 17.8.1987 accepting the report of the Inquiry Officer and holding that the petitioner was guilty of the charges levelled against him except charge No. 4. After consulting the Gujarat Public Service Commission, the State Government passed the impugned order of dismissal with effect from the date of service of the order. It is the aforesaid order of dismissal which is under challenge in this petition.

CONTENTIONS ON BEHALF OF THE PETITIONER

3. At the hearing of the petition, Mr YN Oza with Mr Anshin Desai, learned counsel for the petitioner raised the following contentions :-

3.1 Under Section 62 of the Bombay Land Revenue Code read with Rule 43B of the Bombay Land Revenue Rules and as per the resolutions issued by the Government from time to time, the petitioner was delegated the power to sell unoccupied lands suitable for building sites to persons having occupied unalienated building sites. Accordingly, the petitioner had the power to allot such lands to the landless labours, farmers and other persons as per the relevant Government Resolutions. The petitioner had accordingly acted within his jurisdiction. Strong reliance has been placed on the decision in 1996(1) GLH (UJ) 1.

3.2 The Government itself had issued resolutions permitting sale/allotment of small parcels of land to persons owning adjacent lands. A large number of cases in question fell in this category. Even otherwise, where the land was not allotted to the occupier of the adjacent land, the petitioner had passed the necessary orders after receiving the applications from the concerned village people who were landless labours or farmers whose applications were processed by the Sarpanch and Talati-cum-Mantri of the concerned gram panchayats and forwarded by the Circle Inspector. Since all these authorities had looked into the matter and suggested the price at which the land may be sold to such applicants, the petitioner had not committed any illegality in allotting lands to the concerned applicants on the basis of the recommendations of the lower authorities. In view of the above, the petitioner had not committed any misconduct whatsoever. Strong reliance has been placed on the decisions in 1978 GLR 341, 1984 GLH 800, 20 GLR 109 and 2000(3) GLR 2191.

3.3 The departmental inquiry was not held in accordance with law as the petitioner was not supplied with copies of the relevant record on which the respondent relied. Reference is made to the reply dated 12/13.7.1984 from the Taluka Development Officer, Visavadar stating that certain record was not available.

3.4 The findings given by the Inquiry Officer and accepted by the Disciplinary Authority were vitiated by non-application of mind and were also perverse as the relevant statements made in the reply and the contentions

raised by the petitioner were not considered by the Inquiry Officer or Disciplinary Authority.

3.5 In any view of the matter even if the charges levelled against the petitioner were held to have been proved, the penalty of dismissal imposed upon the petitioner was shockingly disproportionate to the gravity of the charges found to have been proved against the petitioner.

SUBMISIONS ON BEHALF OF THE RESPONDENTS

4. On the other hand, Ms Manisha Lavkumar, learned AGP for the respondents submitted as under :-

4.1 The petitioner did not have the final authority to dispose of the lands in question since under Section 98(1) of the Gujarat Panchayats Act, 1961 the Government had nominated the Collector as the competent authority to grant previous permission for sale of the lands vested in the panchayats. The petitioner had disposed of the lands without obtaining such permission of the Collector.

4.2 Under the provisions of Section 62 of the Bombay Land Revenue Code read with Rule 43B of the Bombay Land Revenue Rules, the land could have been sold to the owners of the adjacent land only if all the conditions of the relevant statutory provisions were first complied with. It was for the petitioner to satisfy the Disciplinary Authority that the parcels of land in question were small strips of land adjacent to occupied unalienated building sites and also further to prove that such parcels of lands could not have been reasonably disposed of as separate sites by holding public auctions. There is no material on record to show that the petitioner had made such inquiries to satisfy himself that the conditions stipulated in the relevant statutory provisions were fulfilled.

In any view of the matter, even if the lands could have been disposed of without holding a public auction, the petitioner had not recovered the market price for the lands in question, but the lands were sold away at a throw away price.

4.3 As far as the grievance about non-supply of the documents is concerned, all that the certificate dated 12/13.3.1984 from the Taluka Development Officer, Visavadar mentioned was that the correspondence and notings regarding the land records of the year 1970-71 and 1972 were not available, but the concerned files in

respect of each individual plot was available. It is further submitted on the basis of the affidavit in reply that the concerned files were sent to the Deputy Collector and when the petitioner asked for inspection of such files, the petitioner was informed accordingly that the files were not available as they were sent to the concerned office.

4.4 As far as the challenge to the findings given by the Inquiry officer and accepted by the Disciplinary Authority is concerned, it is submitted that the petition raises disputed questions of fact on which the Inquiry Officer as well as the Disciplinary Authority have already given concurrent findings and it is not for this Court to reappreciate the evidence or to interfere with the findings of fact while exercising the power of judicial review under Article 226 of the Constitution.

4.5 Lastly on the question of penalty, it is submitted that once the Disciplinary Authority came to the conclusion that the petitioner was guilty of six charges out of seven charges including disposal of public property without following the prescribed procedure, this Court would not substitute its opinion for the decision of the Disciplinary Authority regarding the quantum of penalty. Strong reliance has been placed on the decisions in 1995 (6) SCC 749, 1997 (6) SCC 381, 1998(4) SCC 310 and 1998(8) SCC 243.

DISCUSSION

CONTENTION No. 1

5. The learned counsel for the petitioner has submitted that the resolution dated 16.9.1970 (Annexure 2 - pg. 101) itself delegated power of disposal of lands under Rule 43B of the Bombay Land Revenue Rules to the Panchayat with effect from the date of issuance of the said resolution. Further, such power of disposal of lands in villages with population upto 5000 was conferred on the Taluka Development Officer whereas the power in respect of villages with population above 5000 was conferred on the District Development Officer. It is, therefore, submitted that in view of this Government Resolution, the respondents were not justified in holding that the petitioner had no power or jurisdiction to dispose of the lands under Rule 43B.

6. On the other hand, the learned AGP has relied upon the Government circular dated 29.4.1972 (Annexure 3

- Pg. 103) read with memorandum dated 12.5.1972 (Annexure 4 - pg.105) wherein it was laid down that although the Taluka Development Officer and the District Development Officer could take the decisions for disposal of lands under Rule 43B of the Bombay Land Revenue Rules, the permission of the Collector under Section 98(1) of the Gujarat Panchayats Act, 1961 was still required to be obtained by the Taluka Development Officer or the District Development Officer, as the case may be.

7. Rule 43B of the Gujarat Land Revenue Rules, 1972 reads as under :-

"43-B. Disposal of small strips of land adjacent to occupied unalienated building sites - When any small strip of land vesting in Government adjacent to an occupied unalienated building site cannot reasonably be disposed of as a separate site, the Collector may, notwithstanding anything to the contrary contained in any of the rules in this Chapter, grant such strip to the holder of the said site on the same tenure on which he holds the said site if he agrees to pay -

(a) assessment or rent, as the case may be, for such strip of land at the same rate, if any, at which he pays assessment or rent for the said site, and

(b) such price or premium as the Collector deems adequate having regard to the situation of such strip and any other advantages which are likely to accrue to the holder on account of its disposal to him."

Section 98(1) of the Gujarat Panchayats Act, 1961

read as under :-

"98. Limitation on power of Panchayat to transfer immovable property.- (1) Subject to the provisions of sub-section (2), no lease, sale or other transfer of any immovable property vesting in or acquired by, a panchayat shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the competent authority."

8. A perusal of the aforesaid statutory provisions i.e. Rule 43B of the Gujarat Land Revenue Rules and Section 98(1) of the Panchayats Act read with the aforesaid Government Resolution and memorandum clearly shows that technically speaking it was the Collector which was the final authority for disposal of small strips of land adjacent to occupied building sites. The Government itself, however, contemplated that the sanction of the Collector will be a mere formality as stated in the Government memorandum dated 12.5.1972 (Annexure 4). However, although the contention urged on behalf of the petitioner is required to be rejected, the fact that the Government itself contemplated this to be a formal sanction will have some bearing on the question of proportionality of penalty.

CONTENTION Nos. 2 and 4

9. The second contention urged on behalf of the petitioner very strenuously was that the lands in question were not valuable lands in urban areas, but they were small strips of land in small villages with population of hardly about 1000 to 2000 people. The persons to whom such strips of lands were allotted were village people who were landless labours or farmers having their dwelling units on the adjoining lands. The lands themselves were of the area ranging between 60 sq.yards and 120 sq.yards. Moreover, the Government itself had fixed the upset price of such lands at a marginal sum of Rs. 0.25 ps. per sq.yard. Looking to these facts and also considering the fact that the Talati and Circle Inspector themselves had processed the applications and had indicated the then prevailing market price, the petitioner had allotted the lands at the rate of Re. 1 per sq.yard in village Baradiya, Re. 0.75 per sq.yard in village Champarda, Rs.2.25 per sq. yard in village Junichavad, Rs.2.00 per sq. yard in village Ambada, Rs.1.50 per sq. yard in village Limbdara and at the rate of Rs.10.40 per sq. yard in village Nani Monpari. It is, therefore, urged that in this set of circumstances, the petitioner was not required to auction the lands in question.

10. On the other hand, it is pointed out by the learned AGP that if at all the upset price was fixed at Rs.0.25 per sq. yard, it would only mean that the land could not be allotted at a price lower than that. There was nothing to prevent the petitioner from going in for auction of all these parcels of land numbering 29. Even

if the petitioner had auctioned one parcel of land in each village, the petitioner could have got the estimate of the prevalent market price. By not resorting to auction in any of the cases, the petitioner had clearly committed breach of the relevant Government instructions and also the Government Resolution dated 2.9.1969 (Annexure 1).

11. As against the above submission, in rejoinder the learned counsel for the petitioner has pointed out that the Government Resolution dated 16.9.1970 (Annexure 2) and Government Circular dated 29.4.1972 (Annexure 3) themselves contemplated disposal of small strips of land under Rule 43B without holding any auction.

12. Having heard the learned counsel for the parties and having considered the report of the Inquiry Officer which was also accepted by the Disciplinary Authority, it appears that in a number of cases, lands in question were allotted without proper scrutiny. For instance, in case of Bava Lava and in case of Khoda Lava, the petitioner had allotted 120 sq. yards of land to each of them. In respect of both the cases, the Inquiry Officer has given a finding that the land in question was not adjacent to the dwelling units and the lands in question could have been disposed as independent plots after holding an auction. Similar finding is given that the lands in question could have been disposed of as independent plots in cases of Harji Ram, Ram Devji, Bachu Devji, Bachu Nagji, Bhikha Ratna, Bhagwan Ratna and Ranchhod Ratna.

12.A As regards the petitioner's contention that the petitioner had relied on the opinion of the Sarpanch, Talati and Circle Inspector, on this aspect the Inquiry Officer stated in the case of Uka Goa that the Circle Inspector had indicated his no objection to disposal of the land but that did not mean that the Circle Inspector had given the report that the land was a small strip of land adjoining the land of another person and that the case fell under Rule 43B of the Land Revenue Rules.

As far as the aforesaid aspect is concerned, it does appear that the petitioner relied on the reports submitted by the Sarpanch, Talati and Circle Inspector of the six concerned villages in question who had also indicated fair market value of the lands in the respective villages. The irregularity alleged against the petitioner, however, therefore, does not stand disproved. It only has a bearing on the degree of gravity of the charges which can be said to have been proved against the petitioner.

12.B It further appears that there were a few cases where the areas of parcels of land was so small in some cases, the area ranged between 6 sq.yards (Meghji Jiva), 10 sq. yards (Bhikha Ratna, Ambada), 31 sq. yards (Fula Nanji, Ambarda-Champarda), 17 sq. yards (Fla Nanji), 22 sq. yards (Kana Kura) and 11 sq. yards (Khodidas Trikamji) -- that in such cases the petitioner could not have expected anything more than to rely on the report of the village officials and also the Circle Inspector as in case of such small strips of land it would have been both uneconomical and impractical to go in for auction. There were only 9 out of 29 cases where the land admeasured more than 100 sq. yards each.

12.C In view of the findings of fact, particularly regarding the plots admeasuring 100 sq. yards or more, it is not open to this Court to hold that all the lands in question were small strips of land which were required to be allotted to the owners of the adjoining lands under Rule 43B of the Bombay Land Revenue Rules. In view of the above, the Court would not be in a position to interfere with the findings of fact given by the Inquiry Officer and accepted by the Disciplinary Authority in respect of those cases where the area exceeded 100 sq. yards. The fact that the areas of such land did not exceed in any case 120 sq. yard would have a bearing on the question of proportionality of penalty.

CONTENTION No. 3

13. As far as the third contention is concerned, the petitioner's grievance that all the relevant record was not made available to the petitioner does not appear to be well founded as it is explained in reply affidavit that the necessary file pertaining to each allotment was available, but the file containing the correspondence and notings was sent to the Deputy Collector. The learned counsel for the petitioner is not in a position to point out any specific prejudice caused to the petitioner on account of non availability of any file which was sent to the Deputy Collector. In any case, it was open to the petitioner to make a suitable application to the Deputy Collector or to the concerned authority for getting copies of the relevant documents or in respect of the file.

CONTENTION No. 5

14. Coming to the last contention, the learned counsel for the petitioner has vehemently urged that even if the charges levelled against the petitioner are held to have been proved, the penalty of dismissal was shockingly disproportionate to the gravity of the charges.

On the other hand, the learned AGP has submitted that when the charges are held to have been proved and the petitioner disposed of a large number of parcels of land without authority of the Collector and without following the procedure of public auction, the penalty of dismissal from service was the only appropriate penalty. The learned AGP has also placed strong reliance on the decision of the Apex Court in B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749 that the Court is not to sit in appeal over the decision of the Disciplinary Authority and substitute the order of penalty merely because the Court would have taken another view.

15. Having heard the learned counsel for the parties, the Court finds that while imposing penalty, the nature, area and location of the lands in question was required to be considered by the authorities. The area did not admeasure more than 50 to 70 sq. yards in 20 out of 29 cases and that in other 9 cases also the area did not exceed 121 sq. yards. The lands were situate in villages with population of about 1000 to 2000 people, where the Government itself had fixed the upset price of the lands at Rs.0.25 per sq. yard. The petitioner had himself relied on the reports of the subordinate officers like the Talati of the village and the Circle Inspector in the area. In view of the above relevant factors not taken into consideration by the disciplinary authority, the penalty of dismissal was disproportionate to the gravity of the charges proved against the petitioner and shocks the conscience of the Court.

16. The learned AGP has, however, vehemently contended that in any case the Court would not substitute the order of penalty and that if at all the petitioner has made out any case of shockingly disproportionate penalty, the only course available to the Court is to remand the matter to the Disciplinary authority to reconsider the question of penalty. The Court would have ordinarily accepted this submission and remanded the matter to the disciplinary authority, but the facts that the incident in question was of the year 1971, the departmental inquiry was initiated in the year 1984, the order of dismissal was passed in the year 1987 and the petition was filed in the year 1987, the petitioner

attained the age of 58 years on 31.7.1990 and that the petition has remained pending before this Court for the last 13 years are strong enough to constitute the present case as one of those exceptional cases as contemplated by the Supreme Court in Charturvedi's case (supra) where the Court can not merely interfere with the order of penalty but also substitute the penalty lest an order of penalty to be passed by the Disciplinary Authority after remand should result into another round of litigation. It appears to the Court that looking to the facts and circumstances and the nature of the charges levelled against the petitioner and the nature, area and location of the lands in question, the penalty of compulsory retirement would serve the ends of justice.

17. In view of the above discussion, while not interfering with the findings accepted by the Disciplinary Authority that the charges levelled against the petitioner (except charge No. 4) were proved as held in the impugned order dated 17.8.1987 (Annexure "A" to the petition), the said order is set aside in so far as it imposed the penalty of dismissing the petitioner from service and the penalty shall stand substituted by the penalty of compulsory retirement of the petitioner from service with effect from the same date from which the petitioner was dismissed from service.

18. It is clarified that if there were any other departmental inquiries pending against the petitioner when the impugned order of dismissal was passed on 17.8.1987, this judgment shall not come in the way of the authorities proceeding with the inquiries from the stage/s where the inquries, if any, were pending against the petitioner on 17.8.1987 and passing appropriate orders in accordance with law in those inquiries, but such inquiry/ies shall be concluded by the respondents within six months from the date of receipt of the writ of this Court or a certified copy of this judgment, provided that the petitioner cooperates with the authorities in expeditious disposal of such inquiries. It is thereafter that the order passed in the preceding paragraph shall take effect, provided in the other inquiry/ies the petitioner is not subjected to any more severe penalty.

19. Rule is made absolute in the aforesaid terms with no order as to costs.

(M.S. Shah, J.)

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